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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	30 November 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2017) 709 final
Subject:	Proposal for a COUNCIL DECISION on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning an amendment to Annex XI (Electronic communication, audiovisual services and information society) to the EEA Agreement

Delegations will find attached document COM(2017) 709 final.

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2017/0315 (NLE)

Proposal for a

COUNCIL DECISION

**on the position to be adopted, on behalf of the European Union,
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Annex XI (Electronic communication, audiovisual services and information society)
to the EEA Agreement**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The draft Decision of the EEA Joint Committee (annexed to the proposed Council Decision) aims to amend Annex XI (Electronic communication, audiovisual services and information society) to the EEA Agreement in order to incorporate Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market¹.

The adaptations appearing in the draft of the annexed Decision of the EEA Joint Committee go beyond what can be considered mere technical adaptations in the sense of the Council Regulation No 2894/94.

- **Consistency with existing policy provisions in the policy area**

The annexed draft EEA Joint Committee Decision extends the already existing EU policy to the EEA EFTA States (Norway, Iceland and Liechtenstein).

- **Consistency with other Union policies**

The extension of the EU acquis to the EEA EFTA States, through their incorporation into the EEA Agreement is conducted in conformity with the objectives and principles of that Agreement, aiming at establishing a dynamic and homogeneous European Economic Area, based on common rules and equal conditions of competition.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legislation to be incorporated into the EEA Agreement is based on Article 114 of the Treaty on the Functioning of the European Union.

Article 1(3) of Council Regulation (EC) No 2894/94² concerning arrangements for implementing the EEA Agreement provides that the Council establishes the position to be adopted on the Union's behalf on such Decisions, on a proposal from the Commission.

The EEAS in cooperation with the Commission submits the draft Decision of the EEA Joint Committee for adoption by the Council as the Union's position. The EEAS would hope to be able to present it in the EEA Joint Committee at the earliest possible opportunity.

¹ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, OJ L 257, 28.8.2014, p. 73.

² OJ L 305, 30.11.1994, p. 6–8

- **Subsidiarity (for non-exclusive competence)**

The proposal complies with the subsidiarity principle for the following reason.

The objective of this proposal, namely to ensure the homogeneity of the Internal Market, cannot be sufficiently achieved by the Member States and can therefore, by reason of the effects, be better achieved at Union level.

The process of incorporation of the EU acquis into the EEA Agreement is conducted in conformity with the Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area which confirms the approach taken.

- **Proportionality**

In accordance with the principle of proportionality, this proposal does not go beyond what is necessary in order to achieve its objective.

- **Choice of the instrument**

In conformity with Article 98 of the EEA Agreement, the chosen instrument is the EEA Joint Committee decision. The EEA Joint Committee shall ensure the effective implementation and operation of the EEA Agreement. To this end, it shall take decisions in the cases provided for in the EEA Agreement.

3. **RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Collection and use of expertise**

Not applicable

- **Impact assessment**

Not applicable

4. **BUDGETARY IMPLICATIONS**

There are no budgetary implications expected as a result of the incorporation of Regulation (EU) No 910/2014 into the EEA Agreement.

5. **OTHER ELEMENTS**

- **Justification and proposed solution:**

Article 14 of Regulation (EU) No 910/2014:

Pursuant to Article 14 of Regulation (EU) No 910/2014, trust services provided by providers established in third countries shall be recognised as legally equivalent to those provided by providers established in the EU where they are recognised under

an agreement concluded between the EU and that third country, or with an international organisation.

Following the incorporation of Regulation (EU) No 910/2014 into the EEA Agreement, the internal market principle embodied in Article 4 of the Regulation shall apply as regards all the EEA Contracting Parties, thereby creating an internal market between the EFTA States and the EU. However, the EU agreements which, pursuant to Article 14, permit third country undertakings to provide services on the extended single market – including in the EFTA States - will not be concluded on behalf of the EFTA States. Conversely, the EEA Agreement does not affect the competence of the EFTA States to conclude such international agreements with third countries or international organisations on their own behalf. Therefore, provided that these agreements uphold the standards laid down in Article 14(2), they should also allow for trust services originating in third countries to be recognised as equivalent on the extended internal market. Therefore, an adaptation to Article 14(1) is provided.

In order to ensure the effective operation of the EEA Agreement in that respect, an exchange of information as regards international agreements on market access for trust services should take place within the EEA Joint Committee, in accordance with Article 92 of the EEA Agreement. Where necessary, the Contracting Parties shall enter into consultations in order to solve possible difficulties. An adaptation is therefore provided.

In order to maintain equal conditions of competition on the extended internal market, it is of importance that trust service providers established in the EFTA States benefit, as far as possible, from the reciprocal treatment granted by third countries to EU undertakings under agreements concluded by the EU – since third countries' undertakings would thereby automatically be granted access to the EFTA States' market. The draft Decision of the EEA Joint Committee therefore proposed the corresponding adaptation.

The three proposed adaptations are substantively identical to the adaptations currently in force in the EEA as regards Directive 1999/93/EC of the European Parliament and of the Council³, see point 51 of Annex XI to the EEA Agreement.

³ OJ L 13, 19.1.2000, p. 12.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 in conjunction with Article 218(9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area⁴, and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the European Economic Area⁵ ('the EEA Agreement') entered into force on 1 January 1994.
- (2) Pursuant to Article 98 of the EEA Agreement, the EEA Joint Committee may decide to amend, inter alia, Annex XI (Electronic communication, audiovisual services and information society) to the EEA Agreement.
- (3) Regulation (EU) No 910/2014 of the European Parliament and of the Council⁶ is to be incorporated into the EEA Agreement.
- (4) Annex XI (Electronic communication, audiovisual services and information society) to the EEA Agreement should therefore be amended accordingly.
- (5) The position of the Union within the EEA Joint Committee should therefore be based on the attached draft decision,

⁴ OJ L 305, 30.11.1994, p. 6.

⁵ OJ L 1, 3.1.1994, p. 3.

⁶ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, (OJ L 257, 28.8.2014, p. 73).

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the Union, within the EEA Joint Committee on the proposed amendment to Annex XI (Electronic communication, audiovisual services and information society) to the EEA Agreement, shall be based on the draft decision of the EEA Joint Committee attached to this Decision.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

*For the Council
The President*